

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JUNIOUS VITAL, ET AL, . 4:12-CV-01357
PLAINTIFFS, . HOUSTON, TEXAS
VS. . OCTOBER 1, 2015
1:00 P.M.
NATIONAL OILWELL VARCO, .
DEFENDANT. .
..... DAY 11 - AFTERNOON SESSION

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE LEE H. ROSENTHAL
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS:

Angela M. Alioto
Matthew J. Wayne
Joseph Alioto Veronese
LAW OFFICES OF MAYOR JOSEPH L. ALIOTO & ANGELA ALIOTO
700 Montgomery Street
San Francisco, California 94111

FOR THE DEFENDANT:

John Zavitsanos
AHMAD ZAVITSANOS ANAIPAKOS ALAVI MENSING
1221 McKinney Street
Suite 3460
Houston, Texas 77010

Veronese Direct of Kenneth Lehrer, Ph.D.

13:33 1 dividend, and the dividend is usually a percent, usually a
2 small percent, 5, 6 percent, on a yearly basis of the price or
3 value of a share of stock paid out by the company to the
4 shareholders on a per share basis paid quarterly.

13:33 5 So if you buy a stock in Exxon, as an example, at
6 \$100 a share, Exxon might pay a dividend, which is at the
7 discretion of the board of directors, it is not guaranteed.
8 The board of directors has to vote it. Exxon might pay a
9 dividend of \$4 a year. So you would earn 4 percent on your
13:33 10 \$100 and you would get that quarterly. Or every 90 days, you
11 would go to your mailbox and you would find a check for \$1.
12 And \$1 times four is \$4. And \$4 is 4 percent of 100. That's
13 an example.

14 There are an infinite number of permutations,
13:34 15 combinations and variations, but if I was teaching a class, I
16 would say that's an example of what a dividend is. You buy the
17 stock. You want some goodies in return. You want some candy.
18 Instead of sending you candy, they send you cash.

19 Q So a dividend is not something that a stockholder gets
13:34 20 pursuant to law?

21 A It is not by law. It is voted, usually quarterly. There
22 are certain companies that pay yearly. But it is usually
23 quarterly and it is voted at the sole discretion of the board
24 of directors of that company.

13:35 25 Q Okay. So did the company pay a dividend in 2014?

Veronese Direct of Kenneth Lehrer, Ph.D.

13:35

1 A Yes.

2 Q And what was the dividend in 2014 per share?

3 A The dividend per share for the calendar year 2014 was \$1.64
4 per share. And to explain a little bit, the more shares you
13:35 5 have, of course, the bigger your dividend. David Rockefeller
6 might own 10 million shares of Exxon, I might own one. His
7 dividend is bigger than mine.

8 Q So of the \$2.5 billion in profit of 2014, how much of that
9 did the board of directors voluntarily decide to pay out to
13:36 10 their shareholders?

11 A They paid \$1.64 a share and for the 2014 calendar year,
12 they paid out to all their shareholders \$703 million.

13 Q So they took approximately one-third their profit and gave
14 it to their shareholders voluntarily?

13:36

15 A They gave it to their shareholders voluntarily is correct.

16 Q Okay. And for 2015, the six months, the first six months
17 of 2015, of the \$600 million in profit, how much did the board
18 of directors voluntarily give to their shareholders?

13:36

19 A As of June 30, 2015, the corporation paid dividends on the
20 outstanding common stock equal to \$363 million, or 92 cents per
21 share.

22 Q The board of directors of 2015 voluntarily gave away
23 \$363 million without any obligation to their shareholders?

13:37

24 A Yes. Giving it away is a -- yes, that would be a nice,
25 sweet way of explaining it. They declared a dividend payable

Veronese Direct of Kenneth Lehrer, Ph.D.

13:37 1 to their shareholders of \$363 million, commonly referred to as
2 they gave it away to their shareholders.

3 Q What was your conclusion of the net value, if I'm saying
4 that correctly, of NOV upon review of all of this information?

13:37 5 MR. ZAVITSANOS: I'm sorry, Your Honor. Lack of
6 specificity.

7 THE COURT: I will sustain the objection. You can
8 rephrase.

9 BY MR. VERONESE:

13:38 10 Q Doctor, did you determine the corporate value of NOV for
11 the year of 2014 -- sorry -- 2013 through 2015?

12 MR. ZAVITSANOS: Again, Your Honor, lack of
13 specificity on the term "value," Your Honor.

14 THE COURT: Can you be more specific?

13:38 15 MR. VERONESE: Sure.

16 BY MR. VERONESE:

17 Q Doctor, you have been called to testify on the market
18 capitalization of NOV, correct?

19 A Correct.

13:38 20 Q Can you explain to myself as a lay person what that means?

21 A Yes, sir. Market capitalization is a scholastic term and
22 it is defined as the average number of shares outstanding --
23 I'm going to give a little footnote here. The number of shares
24 outstanding of a corporation did not come down from Mount Sinai
13:39 25 on two tablets of stones. It changes. Sometimes they buy

Zavitsanos Cross of Kenneth Lehrer, Ph.D.

14:01 1 A That's what a Section 16 is, sir. There is only one
2 Section 16 in the United States. It can be in your mind or
3 Obama's mind, it is still Section 16.

4 Q Are you going to let me finish my question now?

14:02 5 A Yes, sir.

6 Q There are requirements under the Securities & Exchange
7 Commission that obligate members of senior management of
8 publicly-traded companies to disclose publicly in 10-Ks what
9 they own, family members own, trusts they control and all of
10 that is set forth in the 10-K?

11 A No.

12 Q Okay.

13 A Do you want the reason or you just want a yes or no?

14 Q Let's do some math. Would you agree with me that if we
14:02 15 divide this number by this number, it is less than 1 percent?
16 Just the math.

17 A You get an A for math.

18 Q Thank you, sir. So if, theoretically, this is the amount
19 owned by people at NOV, the rest of this is owned by pension
14:03 20 funds, members of the public, police unions, firefighters,
21 federal employees, right?

22 A Yes.

23 Q Okay. Here is what I really want to talk to you about. Do
24 you know what this case is about?

14:03 25 A I think from my limited involvement, it is a group of

Zavitsanos Cross of Kenneth Lehrer, Ph.D.

14:03 1 gentlemen who I have met who all happen to be African-American
2 were either discriminated against or improperly fired or
3 dismissed or given bad positions and their attorney, Ms. Alioto
4 of San Francisco, put them into a little group, whatever you
14:03 5 call it, a class, a group -- I'm not an attorney -- and got
6 permission from the Court to sue National Oilwell Varco.
7 That's what I believe this case is about.

8 Q Yes, sir.

9 A Am I close?

14:04 10 Q So you told your lawyer, the one that hired you -- and you
11 are getting paid, right?

12 A I get paid, yes, sir.

13 Q And you should be.

14 A Thank you.

14:04 15 Q You told the lawyer that was asking you the question that
16 you have been accepted by a bunch of courts, right?

17 A 99 percent of the time, yes.

18 Q Well, you didn't tell them 99 percent, but that's fine.
19 You told them that you had been accepted by a lot of courts,
14:04 20 right?

21 A Correct.

22 Q And you know, because it's in your report, that there are
23 some very, very specific rules regarding experts, right?

24 A Yes.

14:04 25 Q Okay. And there is a Rule 26(1)(2)(B)(5) that obligates

Zavitsanos Cross of Kenneth Lehrer, Ph.D.

14:04 1 you to identify prior lawsuits you have testified in, right?

2 A Only for the last four years.

3 Q Exactly. Yes, sir.

4 A Correct.

14:04 5 Q Thank you for correcting me. For the last four years,
6 right?

7 A Correct.

8 Q And you, Dr. Lehrer, have attempted to do that here, right?

9 A It was part of our report. I have a copy of it here.

14:05 10 Q And you, Dr. Lehrer, have concealed -- you've concealed
11 some of those cases?

12 A Not to my knowledge.

13 Q Sir --

14 A The answer is no.

14:05 15 Q I'm going to ask you again.

16 A I'm going to answer it the same way. The answer is no.

17 Q Because you concealed some stuff that's a little bit
18 embarrassing?

19 A You can bring out anything you want --

14:05 20 THE COURT: Keep your voices down, please, gentlemen.

21 THE WITNESS: Because the Rule Fed 26 doesn't display
22 or explain when the four years start or stop, so for cases on
23 appeal, it might not be completed. It doesn't say when it
24 starts or stops.

14:05 25 BY MR. ZAVITSANOS:

Zavitsanos Cross of Kenneth Lehrer, Ph.D.

14:05 1 Q I'm going to let you read my notes. That's fine. Here is
2 your report, September 16, 2015. Do you see that?

3 MR. VERONESE: This is not admitted.

14:06 4 MR. ZAVITSANOS: It's not, Your Honor. I'm going to
5 set a reference here.

6 THE COURT: Show it to him before you display it to
7 the jury and offer its admission before you display it and get
8 it ruled on.

9 BY MR. ZAVITSANOS:

14:06 10 Q Dr. Lehrer, do you have your report up there?

11 A Yes, sir.

12 Q Would you like an extra copy?

13 A No, sir.

14 MR. ZAVITSANOS: May I proceed?

14:06 15 THE COURT: Don't put it up until you have it in
16 evidence.

17 MR. ZAVITSANOS: I will.

18 MR. VERONESE: We agree, Your Honor.

19 THE COURT: All right. It's admitted. Now you can
14:06 20 put it up.

21 What is the number?

22 MR. ZAVITSANOS: I think they moved for it,
23 Your Honor, so --

24 MR. VERONESE: Your Honor, this was not a number that
14:06 25 we have reached, so it would be the next in order, Your Honor.

Zavitsanos Cross of Kenneth Lehrer, Ph.D.

14:06

1 I believe it would be 136.

2 THE COURT: Is this going to be a defense exhibit?

3 MR. ZAVITSANOS: A plaintiffs' exhibit.

4 THE COURT: In that case it is admitted as

14:06

5 Exhibit 136.

6 BY MR. ZAVITSANOS:

7 Q Okay. Dr. Lehrer, September 16, 2015, that's when you
8 prepared your report?

9 A Yes.

14:07

10 Q And your report, because you have done this a lot, tracks
11 the rule to identify -- to identify cases that you have
12 testified in, right?

13 A You misunderstood, either intentionally or accidentally, my
14 prior answer. It says cases in the last four years. If a case
15 is closed or open or ongoing, the rule is not clear as to which
16 cases need to be included in the last four years because I have
17 asked dozens of attorneys this, some of whom might be smarter
18 than you, who cannot come up with a definitive answer. If a
19 case is still open, do you include it? If a case is closed but
20 on appeal, do you include it? There is no answer.

14:07

21 So if you find a case somewhere I left out
22 somewhere, it might or might not be correct, your analysis.

23 Q Yes, sir. Sir, you know, you're right. I'm not very smart
24 and I just know that four years, when it says 2010 to 2011 to
25 the present, the way somebody like me would read that would

14:08

Zavitsanos Cross of Kenneth Lehrer, Ph.D.

14:10 1 A No. I disagree with you.

2 Q That's just yes or no.

3 A Am I supposed to give you a yes or a no or just an answer?

4 THE COURT: It calls for a yes or no.

14:10 5 THE WITNESS: No.

6 BY MR. ZAVITSANOS:

7 Q Okay. So -- and "disqualification" means that a judge has
8 determined -- after somebody moves for it, has determined that
9 you are not qualified to give opinion testimony, right?

14:10 10 A No.

11 Q That's what disqualification is?

12 A No. That's what you say it is. That's not what I say it
13 is.

14 Q Fair enough. Anyway, let me just keep going.

14:10 15 And you have been disqualified by a number of
16 judges and a number of courts, right?

17 A No, not according to the attorneys that I went to to seek
18 advice on what to do on different matters. You can go to your
19 attorneys. I can go to mine. The only time I was definitely
14:11 20 disqualified is when some lady in Florida was a pro se attorney
21 and didn't list me as a witness, the judge disqualified me and
22 threw me out of that case. And that case was 26 years ago. So
23 you won't find it on this list because 26 is greater than four.
24 You will find a number of cases that people bring up that are
14:11 25 greater than four years, so they won't be on this list. And

Zavitsanos Cross of Kenneth Lehrer, Ph.D.

14:11 1 that's not defrauding the Court. I'm following the feds.

2 Q One of the judges that disqualified you last year is a
3 federal judge in this building.

4 A Unfortunately, yes.

14:11 5 Q And the reason he disqualified you is because he is black
6 and he is an idiot?

7 A And he was overturned in Galveston, which you failed to
8 bring up. He was overturned. I will show you the case.

9 Q I'm going to get there, Dr. Lehrer, I promise.

14:12 10 A He was overturned and that judge, before he became a
11 federal judge, was a state judge and before he became a state
12 judge was an attorney and had a big fight with me because I
13 called him an idiot. And he is an idiot. And, and, he holds
14 it against me.

14:12 15 THE COURT: Dr. Lehrer, do not call other people
16 idiots from the witness stand, please.

17 THE WITNESS: Sorry, Your Honor. I worked for the
18 gentleman before he was a --

19 BY MR. ZAVITSANOS:

14:12 20 Q There is no question. Your explanation of why Judge
21 Bennett --

22 MR. VERONESE: Your Honor, the tone --

23 THE COURT: Both of you have been asked to tone it
24 down.

14:12 25 BY MR. ZAVITSANOS:

Zavitsanos Cross of Kenneth Lehrer, Ph.D.

14:15 1 Q It just so happens, Dr. Lehrer, that manna from heaven
2 dropped out of the sky. One of my lawyers in my office took
3 your deposition in another case on the first day of this trial.

4 A Yes.

14:15 5 Q And that case is not listed?

6 A No. It's not closed yet. And the four years is not done
7 every day. Wait a second. This case, the Capps case is
8 definitely listed. It is.

9 THE COURT: Just wait for the next question, please,
14:15 10 sir.

11 MR. ZAVITSANOS: May I proceed, Your Honor?

12 THE COURT: Yes.

13 BY MR. ZAVITSANOS:

14 Q "Now, why do you think that the race of Judge Bennett
14:15 15 played a role in his decision" --

16 A Because the attorney --

17 Q Let me finish, sir. I'm reading.

18 "The party on the other side" --

19 MR. VERONESE: Can you tell me where you are so I can
14:15 20 follow along?

21 MR. ZAVITSANOS: Page 43.

22 BY MR. ZAVITSANOS:

23 Q "The party on the other side was African-American and the
24 attorney I was working for was the former first chair assistant
14:15 25 city attorney or some title like that and, in my opinion, he

Zavitsanos Cross of Kenneth Lehrer, Ph.D.

14:16 1 was 10 times smarter than the other attorney, 10 times smarter,
2 but the other attorney was black. Judge Bennett is black.
3 Judge Bennett doesn't particularly care for me. I didn't
4 particularly care for Judge Bennett. And I have the documents
14:16 5 to prove that Judge Bennett doesn't know what he is talking
6 about.

7 "So you think that Judge Bennett showed a
8 preference for the lawyer on the other side or the other side
9 of the case because that lawyer was African-American?

14:16 10 "Answer: Yes."

11 Right?

12 A Yes.

13 Q Ending on page 44, line 8.

14 Then let's go to page 38, line 24:

14:16 15 "So you have previously called Judge Bennett an
16 idiot?

17 "Answer: I believe I did, or stupid or something
18 like that.

19 "And you -- before he became a judge, do you
14:16 20 stand by that assessment of him?

21 "Answer: I'm going to take the Fifth Amendment
22 on that. Let the people of Texas have their own federal judge.
23 If they want him, that's fine, he should not be a federal
24 judge."

14:17 25 A That's correct.

Zavitsanos Cross of Kenneth Lehrer, Ph.D.

14:17 1 Q And that's the explanation that you offer, because he is
2 black, the lawyer was black, the lawyer was dumb, the white guy
3 was smart and these blacks have things going on and that's why
4 you got disqualified, not because you are a quack, right?

14:17 5 A No. Because I had a fight with Judge Bennett and he still
6 holds it against me. He got thrown out on that case where I
7 was an expert.

8 I have been involved in 1800 cases. I have been
9 disqualified three or four times. I'm not a perfect person
14:17 10 like you, and I admit that I have been disqualified a few
11 times, maybe, because nobody is perfect, except you and my
12 ex-wife. It's real simple.

13 Q Sir, you know what we have been doing the last few weeks
14 here?

14:17 15 A Wasting time, if you ask me.

16 Q Looking for racists.

17 A And Judge Bennett is one of them.

18 MR. ZAVITSANOS: I will pass, Your Honor.

19 THE COURT: Thank you.

14:18 20 Redirect, please.

21 MR. VERONESE: I'm trying to find --

22 MR. ZAVITSANOS: Use my copy.

23 THE COURT: Do you have what you need?

24 MR. VERONESE: Yes, Your Honor.

14:18 25 THE COURT: Thank you.